



# **COMMONWEALTH of VIRGINIA**

## **DEPARTMENT OF ENVIRONMENTAL QUALITY**

VALLEY REGIONAL OFFICE

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Secretary of Natural Resources

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David K. Paylor  
Director

Amy Thatcher Owens  
Regional Director

### **STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION - ORDER BY CONSENT ISSUED TO O-N MINERALS (CHEMSTONE) COMPANY Registration No. 80252**

#### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and O-N Minerals (Chemstone) Company, for the purpose of resolving certain violations of the Virginia Air Pollution Control Law, the Permit and applicable regulations.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "BART SOP" means the Best Available Retrofit Technology State Operating Permit issued to Chemstone on December 28, 2009 and amended August 6, 2012.
2. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.
3. "Chemstone" means O-N Minerals (Chemstone) Company, a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. O-N Minerals (Chemstone) Company is a "person" within the meaning of Va. Code § 10.1-1300.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.

5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Facility" means the O-N Minerals (Chemstone) Company - Strasburg facility located at 1696 Oranda Road, Strasburg, Shenandoah County, Virginia, that processes limestone, and manufactures lime and hydrated lime.
7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
8. "NSR Permit" means one of the New Source Review permits which were issued under the Virginia Air Pollution Control Law and the Regulations to Chemstone on May 1, 2002, May 22, 2006, March 25, 2010, and August 6, 2010.
9. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
10. "PCE" means Partial Compliance Evaluation by DEQ staff.
11. "PM" means particulate matter.
12. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" means 9 VAC 5 chapters 10 through 80.
13. "Title V Permit" means the Title V Operating Permit, which was issued under the Virginia Air Pollution Control Law and the Regulations to Chemstone on July 30, 2002.
14. "Va. Code" means the Code of Virginia (1950), as amended.
15. "VAC" means the Virginia Administrative Code.
16. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. O-N Minerals (Chemstone) Company is the owner and operator of a manufacturing plant for lime and hydrated lime located in Strasburg, Virginia.
2. Chemstone is subject to a Title V Operating permit dated July 30, 2002, a BART SOP amended August 6, 2010, and NSR permits dated May 1, 2002, May 22, 2006, March 25, 2010, and August 6, 2010.
3. On September 30, 2013, DEQ staff conducted a PCE of the Facility's Hydrator Particulate Matter and Method 9 test report received on September 26, 2013 for stack testing conducted on August 6, 2013. The following paragraphs describe the staff's

observations and identify the applicable legal requirements.

4. Reported PM emissions were 2.8 lb/hr.

Permit condition No. V.D.2 of the facility's Title V Operating Permit states that "Once each permit term, at a frequency not to exceed five years, a performance test shall be conducted for PM on the hydrator (U10) using EPA Method 5 (40 CFR Part 60, Appendix A) or other DEQ approved method. The test shall be performed, and demonstrate compliance with the standard contained in Condition V.A.3..."

5. Permit Condition V.A.3 states that "Particulate emissions from the operation of the atmosphere hydrator (U10) shall not exceed the limitations specified below:

Particulate Matter

1.0 lb/hr ..."

6. Method 9 opacity results were not reported in 5% increments.
7. Permit condition No. V.D.3 of the facility's Title V Operating Permit states that "Concurrently with the performance tests, Visible Emission Evaluations (VEE), in accordance with 40 CFR, Part 60, Appendix A, Method 9 shall be conducted on the scrubber exhaust (S14)..."
8. 40 CFR 60 Appendix A-4, Method 9, section 2.4 states that "Opacity observations shall be recorded to the nearest 5 percent at 15-second intervals on an observational record sheet..."
9. On October 22, 2013, based on the September 30, 2013 PCE, the Department issued Notice of Violation (NOV) No. AVRO8805 to Chemstone for the violations described in paragraphs 3 through 8 above.
10. On November 21, 2013, DEQ staff met with Facility representatives to discuss the Notice of Violation. Facility representatives stated that they had worked with the hydrator vendor to troubleshoot the process. The only change to the system since the last passing stack test was replacement of spray nozzles with non-OEM (Original Equipment Manufacturer) nozzles. New OEM nozzles were procured and those have been replaced. The facility stated that they would repeat the stack test in December.
11. On January 15, 2014, DEQ staff conducted a Partial Compliance Evaluation (PCE) of the Facility's Hydrator Particulate Matter and Method 9 test report received on January 10, 2014 for stack testing conducted on December 10, 2013 and observed that the report indicated compliance with all emission limits.
12. Based on the results of the September 30, 2013 PCE, the Board concludes that Chemstone has violated Title V Permit conditions V.D.2, V.D.3 and V.A.3 and 40 CFR 60 Appendix A, Method 9 as described in paragraph C(3) through C(8) above.

13. In order for Chemstone to complete its return to compliance, DEQ staff and representatives of Chemstone have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders Chemstone, and Chemstone agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of **\$22,833.00** within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Chemstone shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of Chemstone for good cause shown by Chemstone, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Chemstone admits the jurisdictional allegations, and agrees not to contest, but neither admits nor denies, the findings of fact and conclusions of law in this Order.
4. Chemstone consents to venue in the Circuit Court of the City of Richmond, Virginia for any civil action taken to enforce the terms of this Order.

5. Chemstone declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Chemstone to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Chemstone shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Chemstone shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Chemstone shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which Chemstone intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

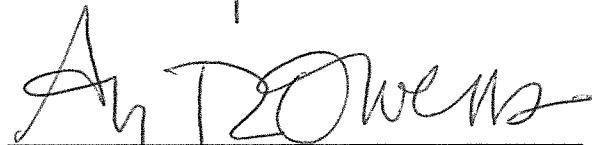
9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and Chemstone. Nevertheless, Chemstone agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after Chemstone has completed all of the requirements of the Order;
  - b. Chemstone petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Chemstone.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Chemstone from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Chemstone and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Chemstone certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Chemstone to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Chemstone.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, O-N Minerals (Chemstone) Company voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 18<sup>th</sup> day of February, 2014



Amy T. Owens, Regional Director  
Department of Environmental Quality

O-N Minerals (Chemstone) Company voluntarily agrees to the issuance of this Order.

Date: 2/11/14 By: K. Whyte, VP General Counsel  
Kevin Whyte Title  
O-N Minerals (Chemstone) Company

Commonwealth of ~~Virginia~~ Pennsylvania

City/County of Allegheny

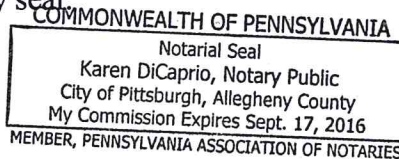
The foregoing document was signed and acknowledged before me this 11<sup>th</sup> day of  
February, 2014, by Kevin J. Whyte who is  
\_\_\_\_\_ of O-N Minerals (Chemstone) Company, on behalf of O-N  
Minerals (Chemstone) Company.

Karen DiCaprio  
Notary Public

Registration No. \_\_\_\_\_

My commission expires: 9-17-2016

Notary seal:



## **APPENDIX A SCHEDULE OF COMPLIANCE**

### **Agreed Actions**

Accordingly, Chemstone agrees to perform performance testing during each of the four calendar quarters following the effective date of this Consent Order for particulate matter (PM) on the hydrator (U10) using EPA Method 5 (40 CFR Part 60, Appendix A) or other DEQ approved method. The tests shall demonstrate compliance with the standard contained in Permit Condition V.A.3. The tests shall be conducted and reported and data reduced as set forth in 9 VAC 5-50-30. The permittee shall submit a test protocol at least 30 days prior to testing. Reports shall be submitted to DEQ within 45 days of the completion of each of the four quarterly tests and shall conform to the test report format enclosed with this permit.

### **Certification of Documents and Reports**

In accordance with 9 VAC 5-20-230(A), in all documents or reports, including, without limitation, the SEP Completion Report, submitted to DEQ pursuant to this Consent Order, Chemstone, shall by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering and evaluating the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

### **DEQ Contact**

Unless otherwise specified in this Order, Chemstone shall submit all requirements of Appendix A of this Order to:

Karen Hensley, P.E.  
Enforcement Specialist Sr.  
VA DEQ –Valley Regional Office  
4411 Early Road  
P.O. Box 3000  
Harrisonburg, VA 22801  
(540) 574-7821 - phone  
(540) 574-7878 - fax  
karen.hensley@deq.virginia.gov